

IN THE
Supreme Court of the United States

October Term, 1968

UTAH PUBLIC SERVICE COMMISSION,

Appellant,

vs.

EL PASO NATURAL GAS COMPANY, et al.,

Appellees.

On Appeal from the United States District Court for
the District of Utah

**MOTION TO SET FOR HEARING MOTION TO
AFFIRM BY SOUTHERN CALIFORNIA GAS
COMPANY AND SOUTHERN COUNTIES GAS
COMPANY OF CALIFORNIA**

AND

**APPLICATION FOR STAY OF
ISSUANCE OF MANDATE**

JOHN ORMASA

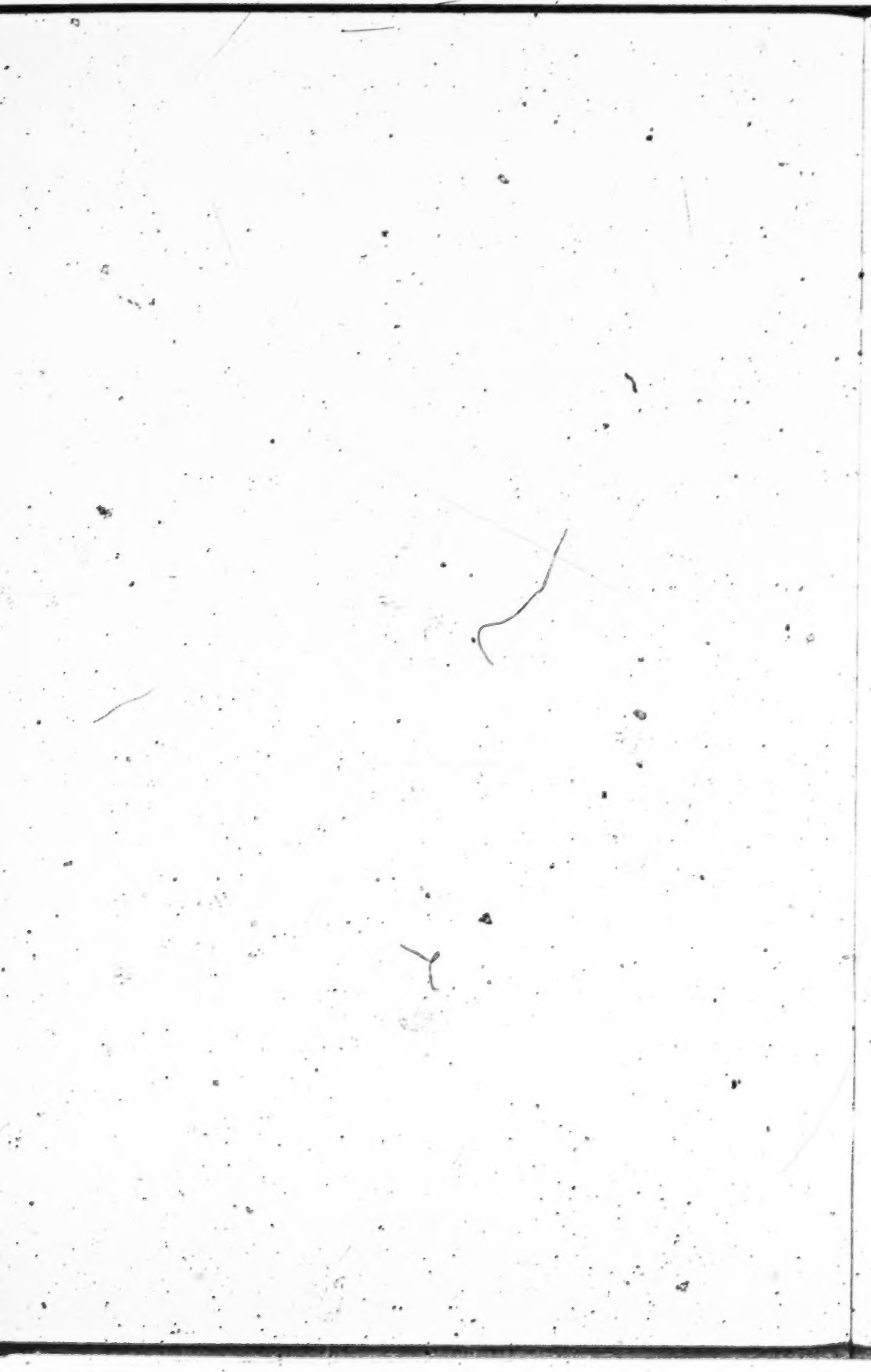
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No. 776

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To The Honorable Warren Earl Burger, Chief Justice
of the Supreme Court of the United States:

SOUTHERN CALIFORNIA GAS COMPANY and
SOUTHERN COUNTIES GAS COMPANY OF CALI-
FORNIA, gas public utilities serving 11-million people in
central and southern California, Intervenor in the case
below and Appellees herein, on December 19, 1968,
filed herein their Motion to Affirm the judgment of the
United States District Court for the District of Utah in

this proceeding. That motion has not been set for hearing. There has been neither any briefing nor any oral argument concerning whether said motion should be granted. It is the specific purpose of this motion to request this Court to set our Motion to Affirm for hearing.

On November 25, 1968, the Utah Public Service Commission filed in this proceeding its Jurisdictional Statement. On December 19, 1968, Southern California Gas Company and Southern Counties Gas Company of California filed herein their Motion to Affirm the judgment below. On February 24, 1969, the Utah Public Service Commission served its Motion to Dismiss Pursuant to Rule 60(2) in which it stated:

"Pursuant to Rule 60(2) of the Rules of the Supreme Court of the United States the Appellant, Utah Public Service Commission, hereby moves the Court for an order dismissing its appeal in the above entitled cause."

On April 21, 1969, this Court issued its order in which it stated:

"The motion of appellant to dismiss the appeal under Rule 60 and the motion of William M. Bennett for a hearing are set for oral argument on April 29, 1969. The Solicitor General is invited to file a brief and present oral argument if he so desires."

Neither by that order nor by any other order did this Court set for hearing the Motion to Affirm filed by our Companies on December 19, 1968. Oral argument was held on the motions of the Utah Public Service Commission and of William M. Bennett on April 29, 1969.

This Court's opinion issued June 16, 1969, lists a number of Appellees which it alleges supported Appellant's motion. The assertion that Southern California Gas Company and Southern Counties Gas Company of California at said oral argument supported Appellant's motion is totally in error. We took no part whatsoever in the oral argument, as the records of this Court must clearly reflect. We neither requested nor were granted the opportunity to appear at the oral argument concerning Appellant's motion to dismiss its appeal. Our concern lay solely as to the merits of the issues and not as to whether or not Utah had the procedural right to dismiss its appeal. For that reason we did not seek to argue these ancillary issues. It has been clear to us throughout this proceeding that an examination of the issues on the merits would necessarily require affirmance of the judgment below. We sought once and for all to have a determination on the merits so that the gas industry could proceed as it must to meet the ultimate needs of the gas consumers. Litigation does not supply required gas supplies to gas consumers.

We were astounded when this Court issued its decision on June 16, 1969, to recognize that the Court was under a misapprehension that it had in fact held a hearing on the merits. Simply stated, there has been no such hearing. The southern California gas consumer has not had his day in court. We respectfully request and hereby move for an order by this Court setting for hearing the Motion to Affirm filed by Southern California Gas Company and Southern Counties Gas Company of California on December 19, 1968.

Application for Stay of Issuance of Mandate

A Petition for Rehearing will be filed by these Companies on or before the last date for filing a petition for rehearing in this proceeding, which is July 11, 1969. There is no automatic stay applicable thereafter and the normal procedure would be for the proceeding to return to the court below for further proceedings, even though petitions for rehearing are pending before this Court. In the companion motion we have filed for an order by this Court to set our Motion to Affirm for hearing. Should this Court, however, not issue a stay of its mandate, a question might be raised as to whether this Court retained the jurisdiction to set the Motion to Affirm for hearing. This course of events would cause grave and irreparable damage to Southern California Gas Company and Southern Counties Gas Company of California, Intervenor-Appellees herein, and to their gas consumers. For that reason Southern California Gas Company and Southern Counties Gas Company of California pray that this Court issue its order granting this application and staying the

mandate of this Court until this Court has ruled on the motion to set for hearing filed herein.

Respectfully submitted,

SOUTHERN CALIFORNIA
GAS COMPANY

SOUTHERN COUNTIES GAS
COMPANY OF
CALIFORNIA

By JOHN ORMASA
 Their Attorney

JOHN ORMASA
H. L. GOTH

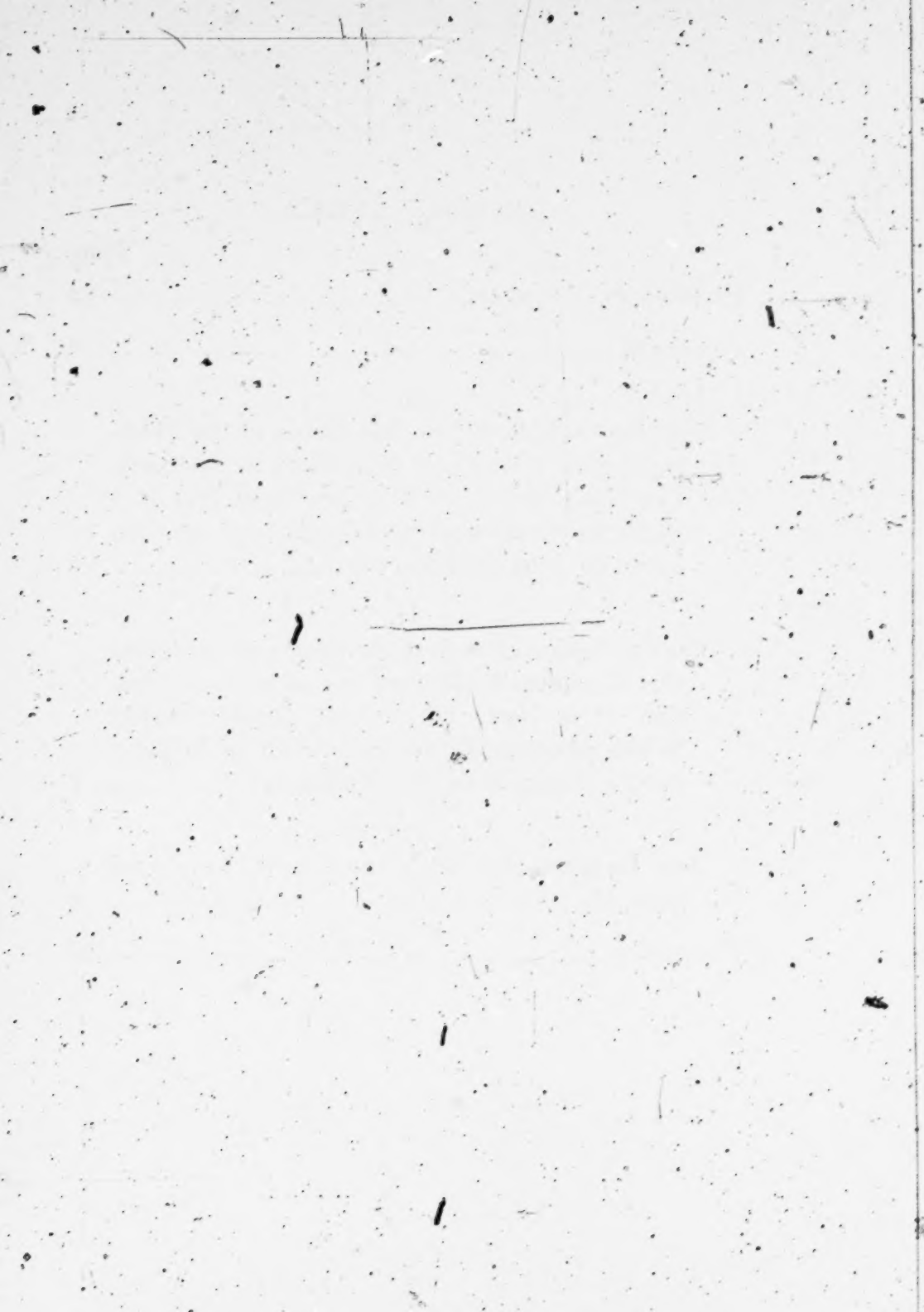
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Motion for Oral Argument on Motion to Affirm
by Southern California Gas Company and
Southern Counties Gas Company of California.

*Southern California Gas Company and Southern
Counties Gas Company of California*, Intervenor in the
case below and Appellees herein, hereby move for oral
argument on the Motion to Affirm the judgment of
the United States District Court for the District of
Utah heretofore filed by said parties on December 19,
1968.